

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of CAROLYNE M. CABRAL and DEPARTMENT OF THE TREASURY,
INTERNAL REVENUE SERVICE, Englewood, CO

*Docket No. 00-1183; Submitted on the Record;
Issued December 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation effective April 28, 1996.

On February 26, 1993 appellant, then a 40-year-old tax examiner, filed a claim alleging that she sustained bilateral arm and wrist injuries causally related to her federal employment. The Office accepted the claim for bilateral wrist tendinitis and appellant began receiving compensation for temporary total disability.

By letter dated March 4, 1996, the Office notified appellant that it proposed to terminate her compensation on the grounds that the medical evidence established that her employment-related condition had resolved. In a decision dated April 5, 1996, the Office terminated compensation for wage loss and medical benefits effective April 28, 1996.

In a decision dated November 18, 1997, an Office hearing representative affirmed the prior decision. In a decision dated November 29, 1999, the Office found that appellant's request for reconsideration was untimely and failed to show clear evidence of error. Appellant's representative submitted evidence that he had submitted a request for reconsideration within one year of the November 18, 1997 decision.

By decision dated February 15, 2000, the Office reviewed the case on its merits and denied modification.

The Board finds that the Office met its burden of proof in terminating compensation effective April 28, 1996.

Once the Office accepts a claim, it has the burden of justifying termination or modification of compensation. After it has been determined that an employee has disability causally related to her employment, the Office may not terminate compensation without

establishing that the disability had ceased or that it was no longer related to the employment.¹ The right to medical benefits for an accepted condition is not limited to the period of entitlement to compensation for disability. To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.²

At the time of the April 5, 1996 termination decision, the only contemporaneous medical evidence of probative value is a September 11, 1995 report from Dr. Robert L. Bass, an orthopedic surgeon, selected as a second opinion referral physician. Dr. Bass provided a history and results on examination. He diagnosed bilateral arm pain, noting “a paucity of objective findings. I am unable to elicit, by physical examination and provocative maneuvers, any set of expected responses. In light of the fact that she has no significant objective findings by clinical examination and that her complaints are out of proportion to her examination I cannot attribute her current condition to the job description that is included in the provided information.” Dr. Bass provided a reasoned medical opinion that appellant no longer had an employment-related condition, indicating a lack of objective findings. He indicated that appellant could use a keyboard for a reasonable period of time, although she might have difficulty doing extended typing at the computer terminal.³ Dr. Bass does, however, clearly state that he did not attribute any continuing condition to the employment injury and, therefore, any disability would not be employment related.

Appellant did not submit any contemporaneous evidence, prior to the April 5, 1996 Office decision, from an attending physician that supported a continuing employment-related condition. Accordingly, the Board finds that the evidence of record was sufficient to meet the Office’s burden of proof in terminating compensation effective April 28, 1996.

After termination or modification of benefits, clearly warranted on the basis of the evidence, the burden for reinstating compensation benefits shifts to appellant. In order to prevail, appellant must establish by the weight of the reliable, probative and substantial evidence that she had an employment-related disability that continued after termination of compensation benefits.⁴

The medical evidence submitted after the April 5, 1996 decision is not of sufficient probative value to meet appellant’s burden of proof to establish a continuing employment-related condition. In reports dated December 17, 1996 and April 29, 1997, Dr. Robert Hays, a rheumatologist, diagnosed fibromyalgia, without providing a reasoned opinion on causal relationship with employment. In a report dated July 24, 1997, Dr. Claudia Elsner, a family practitioner, stated that she could not say with certainty whether appellant’s forearm pain was related to her job duties. In a report dated October 20, 1999, Dr. Daryl MacCarter, a

¹ *Patricia A. Keller*, 45 ECAB 278 (1993).

² *Furman G. Peake*, 41 ECAB 361 (1990).

³ The statement of accepted facts indicated that a tax examiner was required to type approximately six hours per day.

⁴ *Talmadge Miller*, 47 ECAB 673, 679 (1996); *see also George Servetas*, 43 ECAB 424 (1992).

rheumatologist, opined that appellant's "current chronic pain syndrome (fibromyalgia) is job related. Chronic pain syndromes such as fibromyalgia or diffuse widespread pain have been described to follow repetitive strain injuries. It is my opinion that [appellant] did suffer a repetitive strain injury associated with typing for the [employing establishment]." The Board notes that Dr. MacCarter does not provide a complete factual and medical background.⁵ He states that chronic pain syndromes have been described to follow repetitive strain injuries, without explaining why he felt in this case that specific work duties in federal employment, during the years appellant worked, contributed to a chronic pain syndrome. Dr. MacCarter also briefly stated that he felt appellant's right rotator cuff tear was work related, without providing further explanation.

The Board finds that appellant did not submit sufficient reasoned medical opinion, based on a complete background, establishing a continuing employment-related condition after April 28, 1996. The record indicates that the Office met its burden to terminate compensation as of April 28, 1996 and that appellant did not meet her burden to establish entitlement to compensation after that date.

The February 15, 2000 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
December 5, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁵ He did not, for example, indicate his awareness that appellant was involved in a motor vehicle accident in February 1996, or otherwise discuss appellant's medical history since she stopped working.